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March 30, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

Received & Inspected
APR 08 2011
FCC Mail Room

Re: In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing and Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, CC Docket No. 01-92, WC Docket No. 10-90, WC Docket No. 07-135, WC Docket No. 05-337, GN Docket No. 09-51 - Comments

Dear Ms. Dortch:

Pursuant to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM/FNPRM) issued in the above-referenced dockets, Pine Telephone System, Inc. (the Company) is submitting these comments. Pursuant to Paragraph 693 of the NPRM/FNPRM, the original and four copies of these Comments are being filed.

The Company supports the general concept of working to provide greater availability of broadband throughout the nation. However, the Company believes that the Commission is going about it in the wrong way and that the Commission's proposal contained in the NPRM/FNPRM will result in less broadband availability in rural America. In support of this conclusion, the Company offers the following:

- 47 U.S.C. § 254(b)(5) establishes the principle that "There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service." In relying on this principle, the Company has incurred 19.6 million dollars in debt obligations in order to fund investment in telecommunications infrastructure that provides communications and broadband capability in the portion of rural America which the Company serves. The Commission's plan contained in the NPRM/FNPRM to freeze and eliminate many of the existing support mechanisms without a clear path for how the existing investment is to be recouped violates 47 U.S.C. § 254(b)(5). It is not specific. It is not predictable. It is not sufficient.

- The Commission's plan contained in the NPRM/FNPRM is to reduce access charges until they are totally gone. This will allow other carriers to make use of the Company's investment in its network without having to compensate the Company for that use. This plan removes the Company's ability to recover its investment and earn any sort of return on that investment. Without demonstration on the Commission's part of where the revenue loss for use of the Company's network will come from, this action is a violation of the principle that the investors are entitled to earn a reasonable return on their investment. Bluefield Waterworks & Improvement Co. v. PSC of West Virginia, 62 U.S. 679, 43 S. Ct. 675 (1923).

- The practical effect of the Commission's plan in the NPRM/FNPRM is to support 100 megabyte broadband service by 2020 in urban areas and only 4 megabytes download capacity in rural America. This effect of the Commission's plan violates the principle contained in 47 U.S.C. § 254(b)(3) of access to comparable telecommunications and information services, including advanced telecommunications and information services, in rural areas that are reasonably comparable to the services provided in urban areas.

- The effect of freezing and eliminating support mechanisms and eliminating access charges over time, coupled with the inadequate mechanisms in the Commission plan for future support of operations in rural America means that the burden of paying for the very real higher cost to serve rural America will shift to rural customers. This means that the Commission's plan will lead to a situation in which customers in rural areas will not have quality services available at just, reasonable and affordable rates, in contravention of 47 U.S.C. § 254(b)(1). Further, it will mean that customers in rural areas will not have available to them services that are comparable to those offered in urban areas at rates which are reasonably comparable to rates charged for similar services in urban areas in contravention of 47 U.S.C. § 254(b)(3).

- At Paragraphs 194 through 200 of the NPRM/FNPRM, the Commission proposes elimination of corporate operation expenses. That proposal is not a rational approach to regulating a business operation. Communication projects do not get built without someone planning the process and managing the project. Communication projects do not get built without attorneys negotiating rights-of-way and easements. Communication projects do not get built without accountants ensuring that costs are appropriately applied and allocated. To simply eliminate one section of cost that is necessary for the operation of the business is arbitrary and capricious. Certainly there should be limits on corporate overheads, as there is today, to ensure that cost levels are not unreasonable. It would be rational to limit corporate operations expense by size of company or some other mechanism that is rationally related to the expected operations of a business of a particular size. However, elimination of corporate operation expense is not reasonable.

- Employing reverse auctions in lieu of rate of return regulation as a means of ensuring broadband deployment is misguided and will not work for a number of reasons. While reverse auctions might work in a "green field" application, under the Commission's proposal, it would be possible for a reverse auction to be held that affects only a portion of a rural company's area. If a portion of a rural company's area is "lost" for support purposes under a reverse auction, the rural company still has the obligation to fund, maintain and provide the network throughout its service territory. The Commission's plan contained in the NPRM/FNPRM does not explain how that could actually occur in the real world. Further, a reverse auction is a "race to the bottom." Awarding service to the cheapest provider does not result in good service. Nor does it ensure deployment of broadband on a financially sound basis for the long term.

- By capping and removing support for companies in rural areas and by eliminating access charges that have been used to help fund the public switched network that currently exists and by not providing a rational means to allow for continued maintenance, operation and investment in rural areas, the Commission has created a plan that guarantees failures in rural America. This will result in customers in rural America not having access to basic telecommunications, much less advanced telecommunications as required by 47 U.S.C. § 254(b)(2).

- By adopting the Commission's plan in the NPRM/FNPRM, the Commission would be guaranteeing market failure for some, if not many, rural telecommunications companies. If the plan in the NPRM/FNPRM is adopted and there is no recognition of the substantial investments made under current rules so that companies that have made that investment can recover those costs, would constitute a regulatory taking and, in the appropriate factual situation, an unconstitutional confiscation of private property for public use.

- As a result of all of the foregoing, and recognizing that what the Commission is proposing will cause significant financial difficulties for many small companies operating in rural America, the Commission's initial Regulatory Flexibility Analysis contained in the NPRM/FNPRM is woefully inadequate. The Commission needs to do a full analysis of the effect that the proposed plan will have on small companies serving rural areas. It has not done so to date.

The Company urges the Commission to rethink the direction it is heading. The Commission will be presented with an alternative proposal by the Organization for the Promotion and Advancement of Small Telecommunication Companies, the National Telecommunications Cooperative Association and others. The Company urges the Commission to accept that alternative plan rather than the proposal set forth in the NPRM/FNPRM.

Sincerely,

John B. Hemphill

John B. Hemphill
Vice President

JBH:jl